

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION**

**COUNTRY CASUALTY INSURANCE)
COMPANY,)
))
Plaintiff,))
))
vs.) **CV 08-B-1447-J**
))
**PEOPLES TRUST BANK; ANTHONY)
T. WEEKS; TONYA KAY WEEKS,))
))
Defendants.))****

FINDINGS AND CONCLUSIONS

This case is before the court on plaintiff's Applications for Default Judgment against defendants Anthony T. Weeks and Tonya Kay Weeks. (Docs. 25 and 26.)¹ Pursuant to Rule 55, Federal Rules of Civil Procedure, the court makes the following findings and conclusions:

1. Plaintiff properly served the Summons and Complaint upon Ms. Weeks on August 27, 2008. (Doc. 5.) To date, Ms. Weeks has failed to appear, plead, or otherwise defend.
2. Plaintiff properly served the Summons and Complaint upon Mr. Weeks on August 27, 2008. (Doc. 6.) To date, Mr. Weeks has failed to appear, plead, or otherwise defend.
3. The Affidavit of Ian Michael Berry, plaintiff's counsel, states, upon information and belief, that Ms. Weeks is not an infant or incompetent, and she is not in the military.

¹ Reference to a document number, ["Doc. ___"], refers to the number assigned to each document as it is filed in the court's record.

(Doc. 12, Ex. A at 2 ¶ c.)

4. The Affidavit of Ian Michael Berry, plaintiff's counsel, states, upon information and belief, that Mr. Weeks is not an infant or incompetent, and she is not in the military.

(Doc. 12, Ex. A at 4 ¶ c.)

5. In its Complaint for Declaratory Relief, plaintiff asks the court to determine the proper party to be paid certain insurance proceeds as between the Weekses and defendant PeoplesTrust Bank. Because the Weekes have failed to appear and defend and, thus, are in default, the court finds that they have admitted they are not entitled to the insurance proceeds at issue. *See Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975), cited in *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005).

6. Plaintiff has established that neither defendant Tonya K. Weeks nor defendant Anthony T. Weeks is entitled to any payment made or to be made under the homeowners' policy at issue in this case, policy number C01K7057232 . A Declaratory Judgment will be entered contemporaneously with these Findings and Conclusions.

The Clerk of the Court is **DIRECTED** to serve defendants with a copy of these Findings and Conclusions at the following addresses:

Anthony T. Weeks
132 Baker Street
Hackleberg, Alabama 35564-4014

Anthony T. Weeks
211 N. Court Street
Florence, Alabama 35630

Tonya Kay Weeks
132 Baker Street
Hackleberg, Alabama 35564-4014

Tonya Kay Weeks
211 N. Court Street
Florence, Alabama 35630

DONE, this the 27th day of July, 2009.

Sharon Lovelace Blackburn
SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE